No. 96-9 (2)

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

ARKOMA PRODUCTION COMPANY, ARKLA, INC., AND ARKLA EXPLORATION COMPANY,

Conditional Cross-Petitioners,

v.

BOB KLEIN AND GENEVIEVE KLEIN, *et al.*,

Respondents and Cross-Respondents.

On Conditional Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF OF JERRAL W. JONES AND MICHAEL V. McCOY IN OPPOSITION TO CONDITIONAL CROSS-PETITION

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BRIEF OF JERRAL W. JONES AND MICHAEL V. MCCOY IN OPPOSITION TO CONDITIONAL CROSS-PETITION

Jerral W. Jones and Michael V. McCoy, petitioners in No. 95-1924, file this brief in opposition to the conditional cross-petition of Arkoma Production Company ("Arkoma"), Arkla, Inc. ("Arkla"), and Arkla Exploration Company (collectively, the "Arkoma parties"). Jones and McCoy agree with conditional cross-petitioners that the court of appeals, in an earlier phase of this case, misapplied an Arkansas statute of limitations. However, this error on a point of state law is wholly unrelated to the serious question presented in the petition in No. 95-1924 and does not merit this Court's consideration.

STATEMENT

The factual background and proceedings below in this case are described in the petition in No. 95-1924. The matters pertinent to the conditional cross-petition are as follows.

In the first round in this case ("*Klein I*"), the district court, after granting summary judgment in favor of Jones and McCoy and dismissing the royalty holders' claims against them, held a bench trial (in which Jones and McCoy did not participate) of the royalty holders' claim against the Arkoma parties. The court concluded after trial that the claim was time-barred. *See* No. 95-1924 Pet. 5.

The royalty holders appealed. The Eighth Circuit reversed the dismissal of the claims against Jones and McCoy. *Id.* at 5-6. It also ruled that the royalty holders' claim against the Arkoma parties was not time-barred because the statute did not begin to run until the royalty holders actually learned (a month after it was signed) of an amendment to the agreement between Arkoma and Arkla that altered their rights. *Klein I*, Pet. App. 105.[1/]

After this ruling in *Klein I*, a second district judge held a trial of the claims against Jones and McCoy, ruled in their favor, and was reversed in "*Klein II*," the appeal that gave rise to the petition in No. 95-1924.

ARGUMENT

Jones and McCoy agree with the conditional cross-petitioners that the court of appeals' statute of limitations ruling in *Klein I* was erroneous. Under Arkansas law as declared by that state's highest court, the three-year general statute of limitations period on contract claims, which both courts below found applicable, begins to run when the cause of action accrues and is not tolled because of the plaintiffs' ignorance or lack of notice. *See* Conditional Cross-Petition 7; *see also Dupree v. Twin City Bank*, 777 S.W.2d 856 (1989). The royalty holders

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[1/] Jones and McCoy were not parties to, and had no interest in, this contract. They sold Arkoma to a subsidiary of Arkla on December 31, 1986. The Arkla-Arkoma contract was amended on February 13, 1987. Plaintiffs learned of the amendment in March 1987 and brought suit on February 23, 1990. *See* Pet. 4; Pet. App. 104a.

brought suit more than three years after the offending amendment was made to the Arkoma-Arkla contract (although slightly less than three years after they received actual notice).

This Court, however, "do[es] not normally grant petitions for certiorari solely to review what purports to be an application of state law." *See Leavitt v. Jane L.*, 64 U.S.L.W. 3831, 3835 (U.S. June 17, 1996) (No. 95-1242). Although Jones and McCoy would also benefit from a reversal of the statute of limitations ruling, the court of appeals' ruling plainly involves neither a state-wide nullification, *see id.*, nor any other extraordinary circumstance warranting departure from the Court's normal practice of not granting the writ solely to decide a state-law question ruled on by a federal court of appeals.

The state-law question presented by the conditional cross-petition is thus wholly different from the federal question presented in Jones and McCoy's petition. Jones and McCoy were held liable in violation of their federal -- indeed, constitutional -- right to a trial of the core disputed factual issue on which their liability was predicated. The court of appeals' grievous mistake of federal procedure should be corrected by this Court. *See, e.g., Dennison Mfg. Co. v. Panduit Corp.*, 475 U.S. 809, 811 (1986); *Anderson v. City of Bessemer City*, 470 U.S. 564, 566, (1985); *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 858 (1982); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 108 (1969).

CONCLUSION

The conditional cross-petition should be denied. The petition for a writ of certiorari in No. 95-1924 should be granted.

Respectfully submitted,

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